In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 11895 of 2005

Date of Decision: 26.03.2007

Veena Kumari

…Petitioner

Versus

Homeopathic Medical College & Hospital, Abohar and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Vikas Sagar, Advocate,
for the petitioner.

Mr. V.K. Jindal, Advocate,
for respondent Nos. 1 and 2.

JUDGMENT

M.M. KUMAR, J.

The order dated 24.3.2005 (P-1), passed by the competent authority under the Minimum Wages Act, 1948 (for brevity, 'the Act'), is subject matter of challenge in the instant petition filed under Article 226 of the Constitution. It has come on record that immediately on filing of the application under Section 20 (2) of the Act, respondent Nos. 1 and 2 had paid the whole amount. However, the petitioner persuaded her claim by insisting that compensation to the extent of 10 times under Section 20(2) of the Act was payable and the competent authority has failed to award any

compensation. The operative part of the order dated 24.3.2005, reads as under:-

> "……Further she claimed the ten times amount of the above said payment as a cause of delay. With regard to this fact of delay the Claimant has failed to prove it. Rather, the payment claimed by her was made to her by the Management/Respondents immediately after filing claim application without raising any objection and the remaining amount of Rs. 144/- might have been paid to the Claimant by the Respondents as per their assurance given in the Written Statement. However, the wages claimed by the Claimant are for the period from 25.8.2001 to 31.7.2002 whereas she has filed her application through the Labour Inspector Gr-I Abohar on 19.8.2002 which is beyond the limitation prescribed in the M.W. Act. According to the provision under Section 20(2) the said applications as (has?) to be presented within six months from the date on which the minimum wages or other amount became payable. The Claimant has neither mentioned in her claim application nor in her statement-in-chief as to whether she has ever submitted her representation to the Respondents-management for releasing the said remaining wages, and as such it transpires that there is no delay on the part of the Respondents for making the remaining wages under the M.W. Act."

After hearing learned counsel for the parties we are of the view that it is not mandatory for the competent authority to award compensation. A perusal of Section 20 makes it evident that it has been left to the discretion of the competent authority under the Act and the same is not mandatory. It would be apposite to notice relevant provisions of Section 20 of the Act and the same reads as under:-

> "20. Claims. – (1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of Section 13 or of wages at the overtime rate under Section 14, to employees employed or paid in that area.
>
> (2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any legal practitioner or any official of a

registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amount became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct –

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as

the authority may think fit, not exceeding ten times the amount of such excess,

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees,

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

xxx xxx xxx xxx xxx"

A perusal of the aforementioned section shows that in sub-section (3) the expression ***'may'*** has been used which import that the provision with regard to disbursing the compensation to the extent of ten times is not mandatory. It is well settled that the discretion to direct the payment of compensation has to be exercised judicially by taking into account the relevant factors. In the present case, the claim was for the period from 25.8.2001 to 31.7.2002. The application for realization of minimum wages was instituted on 19.8.2002 i.e. almost after 19 days and the amount was paid by cheque on 19.8.2002 itself. The petitioner was not able to persuade the competent authority that there was any delay to make the payment. It has further been found that no grievance was made to the Management with regard to non-payment of minimum wages. The reliance of the petitioner on the

legal notice dated 3.11.2001 (P-2) is wholly misplaced as the legal notice only talks of payment of annual increments from the date of termination till the date of rejoining after her reinstatement by the Labour Court. No claim for minimum wages has been made in the legal notice. Therefore, we find that there is no substance in the instant petition and no mandatory direction could be issued to the respondents to award ten times compensation to the petitioner. This petition fails and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

March 26, 2007

Pkapoor